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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1081

THE LONG ISLAND COLLEGE HOSPITAL,

Petitioner,

against

NEW YORK STATE LABOR RELATIONS BOARD,

and

LOCAL 144, HOTEL, HOSPITAL, NURSING HOME & ALLIED SERICE EMPLOYEES UNION, SEIU, AFL-CIO,

Respondents.

BRIEF OF RESPONDENT LOCAL 144 IN OPPOSITION TO PETITION FOR CERTIORARI

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Statement of the Case

The Petitioner's statement of the case so distorts the facts and contains so many misrepresentations that the Court is respectfully urged to rely instead on the summary set forth in the Opinion of Chief Judge Fuld, writing for a unanimous Court of Appeals the decision for which review is sought by the Petition herein. For a fuller exposition of the facts, the Court is referred to the Find-

ings of Fact set forth in the Intermediate Report of the Trial Examiner (Appendix A; Appendix C 48a-77a).[1]

It is to be noted that the decision of the Court of Appeals and the prior decision of the Appellate Division were based upon the full record, including all of the Exhibits, of the proceedings before the Trial Examiner. Any inconsistencies between the facts as found by the Trial Examiner and the facts as the Hospital would have preferred to have them found were thus resolved by the State courts. Since the Court of Appeals adopted the facts as found by the Trial Examiner, it appears inappropriate for Petitioner to rewrite them here.

Argument

The Petitioner asserts that its constitutional rights have been denied in two respects.

(1) As to the first "issue presented," that of the procedures followed in the Labor Board hearing in which Petitioner was charged with refusal to bargain with Respondent Local 144 on behalf of the Hospital's maintenance department employees, for whom Local 144 was the certified representative, Petitioner erroneously casts the question in terms of its being "prosecuted," and having been denied fair hearing in a "trial." Petitioner apparently wishes, by its colorful choice of language, to transmute the administrative hearing, which it concedes was *in fact* a hearing on its objections to the election in which the Union had been designated as representative, into a quasi-criminal proceeding, thereby suggesting it was entitled to the application of different standards than

[1] References are to appendices to Petition.

those uniformly applied to representation cases before both the State and Federal agencies.[1]

Additionally, the Petitioner's argument on this question so misstates the "denial" to it of access to relevant material, as is apparent from its own references to the Record (Appendix F 84a-93a), that it should be summarily rejected as improperly brought before this Court.

(2) As to the argument that as a voluntary hospital, equal protection of the laws requires that Petitioner have its employees divided into the same bargaining units as those sometimes found appropriate in *private* (profit-making) hospitals, the absurdity of its position is matched only by its lack of respect for the meaning of the constitutional guarantee.[2]

Petitioner does not tell the Court that the Labor Board made the unit determination of which it complains while acting under the same statute that prohibits voluntary hospital workers from striking and picketing, while establishing no comparable restrictions on workers in *private* hospitals. Petitioner does not argue that the distinction between voluntary and private hospitals is violative of the standard of equal protection of the laws in that very fundamental distinction between employees of the two kinds of institutions.[3]

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[1] The Petition on p. 12 describes the hearing of which petitioner complains as a "hearing on its objections to the election . . ."

[2] Petitioner suggests, entirely inaccurately, that separate units of maintenance workers are uncommon or remarkable. Both the state and national Boards regularly find such units appropriate.

[3] Never in the prior stages in this litigation has the Hospital ever expressed any concern for possible constitutional infirmity in classification of voluntary hospitals resulting in restrictions imposed on their employees which arguably affect First Amendment rights; to the contrary Respondent Local 144's appeal to this Court in 1968 which argued that application of the statute imposed unconstitutional restraints on the employees of voluntary hospital was opposed by Petitioner. 23 N. Y. 2d 20 (1968), appeal dismissed 394 U. S. 716 (1969).

But, as to unit determinations, the Petitioner suggests that the statute unfairly classifies voluntary hospitals. This is, of course, factually erroneous in that the same standards for determining bargaining units are and were applied to all groups of employees under the state law. But even were there a distinction made by the Labor Board in units for voluntary hospitals, what would elevate such distinction to the level of a constitutional question?

CONCLUSION

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

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